CLERK'S COPY.

115

61236

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920

No. 357

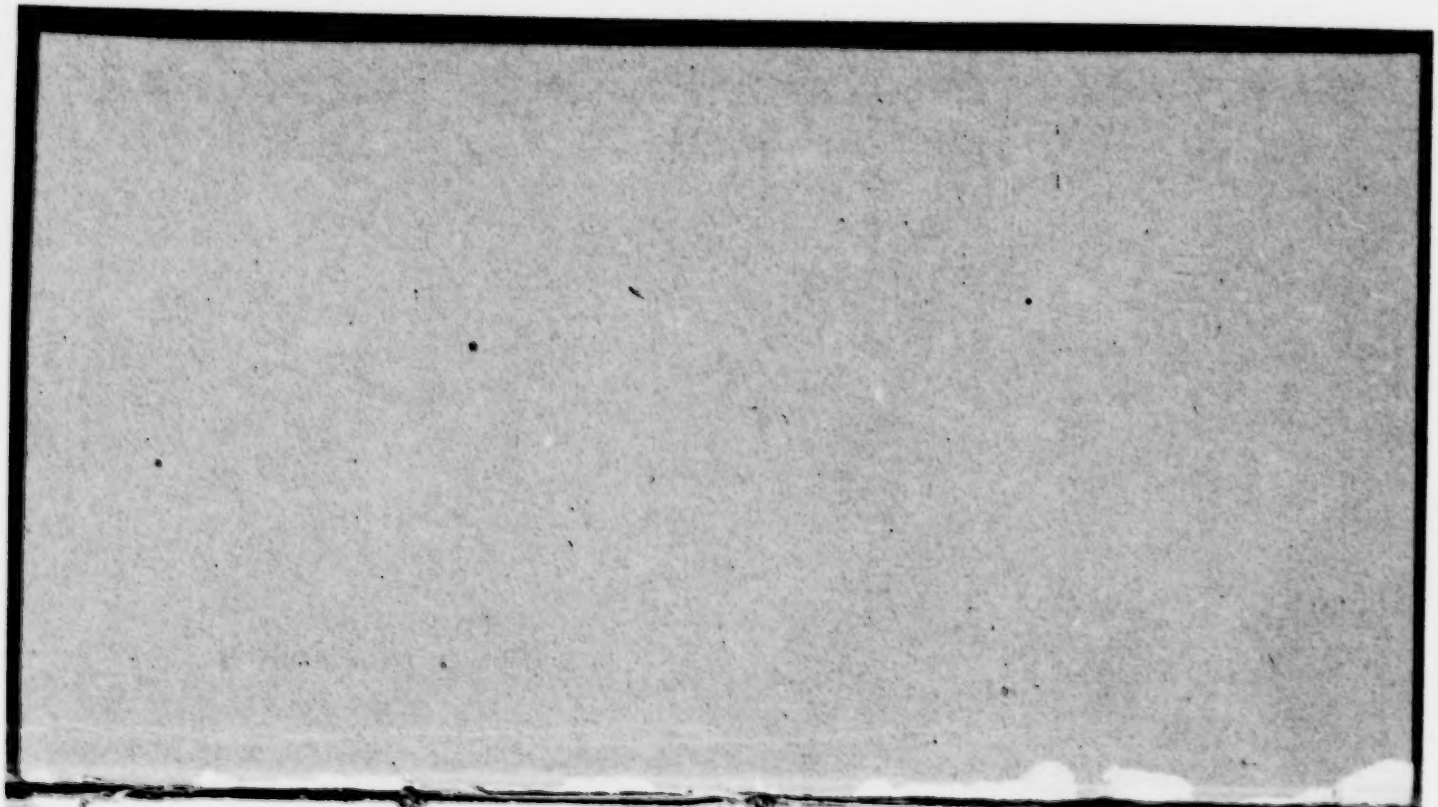
HARRY B. TEDROW, AS UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT OF COLORADO, APPELLANT,

vs.

A. T. LEWIS & SON DRY GOODS COMPANY, THE DENVER DRY GOODS COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED MAY 21, 1920.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 952.

HARRY B. TEDROW, AS UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT OF COLORADO, APPELLANT.

vs.

A. T. LEWIS & SON DRY GOODS COMPANY, THE DENVER DRY GOODS COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

INDEX.

1 Pleas in the District Court of the United States for the District of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the eighth day of May, A. D. 1920, there was filed in said court a transcript of proceedings theretofore had in this court sitting at Pueblo, wherein The A. T. Lewis & Son Dry Goods Company, The Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neusteter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, and The Golden Eagle Dry Goods Company were plaintiffs and Harry B. Tedrow, as United States attorney for the District of Colorado, was defendant.

And the said transcript is in words and figures as follows, to wit:

7027.

[Filed May 8, 1920. Charles W. Bishop, Clerk.]

Pleas in the District Court of the United States for the District of Colorado, sitting at Pueblo.

Be it remembered that heretofore and on, to wit, the ninth day of April, A. D. 1920, the same being one of the regular juridical days of the April term, A. D. 1920, of said court.

2 Present: The Honorable Robert E. Lewis, district judge, the following proceedings were had and entered of record, to wit:

THE A. T. LEWIS & SON DRY GOODS COMPANY et al. vs. HARRY B. TEDROW, AS UNITED STATES DISTRICT Attorney for the District of Colorado.	1653.	In Equity.

This cause comes on now to be heard upon the motion of the defendant to dismiss the bill of complaint herein, and is argued by counsel, C. C. Dorsey, Esquire, appearing as solicitor for the plaintiffs, and Harry B. Tedrow, Esquire, appearing in his own behalf, and thereupon, on consideration thereof,

It is ordered by the court that the said motion be and the same is hereby denied.

THE A. T. LEWIS & SON DRY GOODS COMPANY, The Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Stores Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neusteter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden-Eagle Dry Goods Company, plaintiffs,

v.

HARRY B. TEDROW, as United States
3 District Attorney for the District of Colorado, defendant.

No. 1653. Order.

This cause having heretofore come on to be heard upon the motion of the plaintiffs above named for a preliminary or interlocutory injunction as prayed in the bill of complaint, the said plaintiffs appearing by G. C. Bartels and C. C. Dorsey, their solicitors, and the said defendant appearing in his own proper person, and the court having considered the bill of complaint and the affidavit offered in support thereof, and listened to the argument of counsel, and being now sufficiently advised:

It is hereby ordered that the motion of plaintiffs for said preliminary or interlocutory injunction be and hereby is granted, and that until the final hearing herein or until the further order of this court, the defendant, his agents and representatives, and each of them, be and hereby is enjoined and prohibited from enforcing or attempting to enforce against the plaintiffs herein, or either or any of them, or against the officers, agents, or representatives of them or either of them, the act of Congress approved August 10, 1917, and entitled "An act to provide further for the national security and defense, by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," as amended by an act of Congress approved October 22, 1919, and therein designated as "The food control and District of Columbia rents act"; from prose-
4 cuting or attempting to prosecute or instituting or attempting to institute any prosecution against them, or either of them, under said act, and from in any manner interfering with them, or either of them, or with the business of them, or either of them, or taking or attempting to take any steps whatsoever in respect to them, or either of them, or the business of them, or either of them, under or by virtue of any right or authority claimed to exist by reason of said act as amended, or any part thereof.

FRIDAY, MAY 7th, A. D. 1920.

At chambers in Denver, Colorado, on Thursday, the sixth day of May, A. D. 1920, before the Honorable Robert E. Lewis, district judge, the following proceeding was had, to wit:

THE A. T. LEWIS & SON DRY GOODS COMPANY et al.,
v.
HARRY B. TEDROW, AS UNITED STATES DISTRICT Attorney for the District of Colorado. } 1653.

This cause comes on now to be heard, Clayton C. Dorsey, Esquire, appearing as solicitor for the plaintiffs, and the defendant appearing in his own proper person. And thereupon, upon consideration thereof, it is ordered that this cause be, and the same is hereby, transferred from this court sitting at Pueblo, to this court sitting at Denver, for further proceedings herein.

It is further ordered that the clerk of this court make a
5 transcript of all orders of court entered herein and transmit the same, together with all papers filed herein, to this court sitting at Denver, without delay.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the District Court of the United States for the District of Colorado, do hereby certify the foregoing and above to be a true, perfect, and complete transcript and copy of all orders of court heretofore had and entered of record in said court in a certain cause now in said court pending wherein The A. T. Lewis & Son Dry Goods Company, and twelve others, are plaintiffs, and Harry B. Tedrow, as United States district attorney for the District of Colorado, is defendant, as fully and completely as the same still remain of record in my office at Pueblo.

And I further certify that the papers attached hereto and marked A, B, C, D, E, F, are the only papers filed in said court in said cause.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Pueblo, in said district, this 7th day of May, A. D. 1920.

[SEAL U. S. DIST. COURT.]

CHARLES W. BISHOP,
Clerk.
By GARDNER M. GREENE,
Deputy Clerk.

Clerk's costs at Pueblo:

Plaintiffs'..... $2.95
Defendant's..... .10 } Not paid.

6 [Filed Apr. 8, 1920. Charles W. Bishop, clerk. By Gardner M. Greene, deputy clerk.]

In the District Court of the United States for the District of Colorado.

No. 1653.

THE A. T. LEWIS & SON DRY GOODS COMPANY, THE Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neustetter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company, plaintiffs,

vs.

HARRY B. TEDROW, AS UNITED STATES DISTRICT ATTORney for the District of Colorado, defendant.

Complaint.

Now come the plaintiffs above named, by their solicitors, and for cause of action against the defendant, alleges:

I.

Each of the above named plaintiffs, except The May Department Stores Company, is and at all of the times with respect to which it is hereinafter mentioned was a corporation duly organized and existing under the laws of the State of Colorado, and a citizen and resident of said State. Said The May Department Stores Company is and at all of the times with respect to which it is hereinafter mentioned was a corporation duly organized and existing under the laws of the State of New York, and a citizen and resident of said State, and by due compliance with the laws of the State of Colorado authorized to do and doing business in said State last mentioned.

The defendant is the duly appointed, commissioned, qualified, and acting United States district attorney for the District of Colorado, and is and at all of the times with respect to which he is hereinafter mentioned was a citizen and resident of said State.

7

II.

This is a suit of a civil nature and in equity. The matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars. It arises under the Constitution of the United States in this, to wit: This suit necessarily involves and presents for decision the question of the validity, under the Constitution of the United States, of an act of Congress approved August 10th, 1917, and entitled "An act to provide further for the

national security and defense, by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," as amended by an act of Congress approved October 22nd, 1919, and therein designated as "The food control and the District of Columbia rents act." If said acts be enforced against these plaintiffs, as they will be if enforcement thereof be not enjoined, such enforcement would necessarily and certainly entail upon plaintiffs and upon each of them a loss and damage greatly in excess of the above amount, as hereinafter shown, and would entail numerous prosecutions thereunder against plaintiffs and against each of them, and the possible imposition upon plaintiffs and each of them of penalties and expenses greatly in excess of the above amount, all as hereinafter more fully set forth.

III.

Each of the plaintiffs has been for many years and is now engaged as a retail merchant in buying and selling and in handling and
8 dealing in and with wearing apparel in the city and county of Denver and elsewhere in the State and District of Colorado. Each of said plaintiffs has so conducted its said business that it now has thousands of customers and a well-established trade, and has created and now owns, in addition to its tangible property and assets and its very great investment therein, a good will of immense value and constituting one of its most important and valuable assets.

Each of the plaintiffs now has on hand a large stock of wearing apparel which it has acquired and carried at a great cost and by the investment of large sums of money, and likewise has invested a great amount of money in providing a suitable place or places of business and the necessary fixtures and appurtenances connected therewith.

No combination of any kind does now exist or has at any time existed between or among the plaintiffs to fix or otherwise affect the selling price of any article of wearing apparel dealt in by any of them. Unrestricted competition has always existed and does now exist between them.

IV.

In and by section 1 of the act approved October 22nd, 1919, hereinabove referred to, section 1 of the act of August 10th, 1917, also hereinabove referred to, was amended so as to read as follows:

"That by reason of the existence of a state of war, it is essential to the national security and defense for the successful prosecution of the war and for the support and maintenance of the Army and Navy to assure an adequate supply and equitable distribution and to facilitate the movement of foods, feeds, wearing apparel, containers primarily designed or intended for containing foods, feeds, or fertilizers; fuel, including fuel oil and natural gas,

and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery and equipment required for the actual production of foods, feeds, and fuel, hereafter in this act called necessaries; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulation, and private controls affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessaries during the war. For said purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act."

The sole apparent purpose and the sole effect of said amendment was to include among the articles designated in said act, as necessaries, wearing apparel, which, in the act as originally passed, had not been so designated.

In and by section 2 of said act approved October 22, 1919, section 4 of said act of August 10th, 1917, was amended so as to read as follows:

"That it is hereby made unlawful for any person willfully to destroy any necessaries for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessaries in or in connection with their production, manufacture, or distribution; to hoard, as defined in section 6 of this act, any necessaries; to monopolize or attempt to monopolize, either locally or generally, any necessaries; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries; to conspire, combine, agree, or arrange with any other person, (a) to limit the facilities for transporting, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of necessaries in order to enhance the price thereof; or (e) to exact excessive prices for any necessaries, or to aid or abet the doing of any act made unlawful by this section. Any person violating any of the provisions of this section upon conviction thereof shall be fined not exceeding $5,000 or be imprisoned for not more than two years, or both: *Provided*, That this section shall not apply to any farmer, gardener, horticulturist, vineyardist, planter, ranchman, dairyman, stockman, or other agriculturist, with respect to the farm products produced or raised upon land owned, leased, or cultivated by him: *Provided further*, That nothing in this act shall be construed to forbid or make unlawful collective bargaining by any cooperative association or other association of farmers, dairymen, gardeners, or other producers of farm products with respect to the farm products produced or raised by its members upon land owned, leased, or cultivated by them."

In and by section 24 of said act approved August 10th, 1917, of which act the amendments made by the act approved October 22nd, 1919, became a part, it was and is provided as follows:

"That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this act; but all rights and liabilities under this act arising before its termination shall continue and may be enforced in the same manner as if the act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this act had not been terminated."

V.

The defendant, in his capacity as United States district attorney for the District of Colorado, has been and still is claiming, asserting, and charging that the plaintiffs have been and now are and that each of them has been and now is, in violation of the act of Congress and the amendment thereof aforesaid, making unjust and unreasonable rates and charges in handling and dealing in and with
11 wearing apparel, and charging excessive prices therefor. The plaintiffs have, and each of them has, at all times, earnestly and conscientiously endeavored to fix, make, and exact only such rates, charges, and prices as were, in view of all relevant facts, just and reasonable and not excessive, and they have not, nor has either or any of them at any time consciously made or exacted any rate, charge, or price which was either unjust or unreasonable or excessive.

Nevertheless, defendant deeming it his duty so to do, under the terms of said act of Congress, as amended, hereinabove set forth, and entertaining different views as to what constitutes just, reasonable, and nonexcessive rates, charges, and prices and applying different standards in making the determination, has threatened to, and unless prevented by injunctive order of this honorable court will, institute numerous prosecutions against the plaintiffs and each of them, for alleged violations of said act of Congress, will file informations and procure or attempt to procure indictments against them, and thereby and otherwise subject them to numerous and repeated prosecutions for alleged violations of said act. To illustrate: Defendant insists and will insist that in determining whether any particular rate, charge, or price for wearing apparel is just or unjust, reasonable or unreasonable, excessive or nonexcessive, sole regard must be had to the actual original cost to the merchant of the particular and specific article in question, and that the present value

thereof, at the time when the merchant fixes, makes, or exacts the rate, charge, or price thereof, cannot be taken into consideration, and solely by virtue of the authority and power vested in defendant, because of his official position, he will, by insistence upon such standard, institute and press prosecutions against plaintiffs and each of them, seek and procure indictments against them and each of them, and do and commit the wrongful acts elsewhere herein more fully stated, unless prevented by order of this honorable court. But for the past several years, and particularly during the latter part of said period, the actual costs to merchants of the wearing apparel in which they deal have been rapidly and at frequent intervals advanced. As a consequence each of these plaintiffs and every merchant dealing in wearing apparel has in his stock numerous articles of exactly the same kind and quality, which, however, represent to him greatly differing costs. Moreover, the actual fair value of such articles of merchandise and each thereof has, since the same were placed in the stock of said merchant, advanced rapidly and materially. Such increments in value are the private property of the merchant in each instance, as much so as the article of wearing apparel itself, and each merchant has a right assured to him by the Constitution of the United States to the benefit and enjoyment thereof. But the position assumed and insisted upon and which will be persisted in by defendant does and will necessarily result in depriving the plaintiffs herein, and each of them and every such merchant in wearing apparel, of all benefit of such increments in value and will subject them and each of them to the risk of the heavy punishment and penalty imposed by the act here involved, whenever they seek to avail themselves thereof or to take the benefit of the same, as they have a constitutional right to do. All of which is in conflict with and prohibited by Article V of the amendments to the Constitution of the United States. Moreover, if specific articles of wearing apparel should be by the individual merchant priced with sole reference to the actual original cost of each of said articles, instead of in accordance with the present fair value thereof, or in accordance with the average of the actual original cost to the merchant of such and like articles in his stock, the result would be that in the stock of each of these plaintiffs and of every other merchant in wearing apparel great numbers of articles exactly alike, both in kind and quality, and differing only in respect to the date of their acquisition by the merchant would bear wholly different and widely divergent prices, both in the case of each merchant and also in the case of every merchant, when compared with all other merchants, thus producing a situation rendering it wholly and absolutely impossible to properly or at all conduct or continue in the business of merchandising in wearing apparel, and producing such a state of confusion as to totally destroy the business. Moreover, the result thereof to the members of the public who deal and have been accustomed to deal with the

plaintiffs herein and other merchants in wearing apparel would be wholly intolerable. This likewise is and will be in conflict with and prohibited by the fifth article of the amendments to the Constitution of the United States.

VI.

Notwithstanding the provision of the first section of said act
14 quoted above that "The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act," the fact is that with respect to wearing apparel no such regulations have been made and no such order or orders issued, either by or for the President, or otherwise, or at all, and in respect to the sale of wearing apparel no prices, rates, or charges whatsoever have been fixed, either by the President or on his behalf or by any official, body, or agency, or otherwise, or at all, for the guidance of persons handling or dealing in the same, nor have any steps been taken so to do.

Under the terms of said act each sale at retail of any article of wearing apparel constitutes or may constitute a violation of said act. The sole business of plaintiffs, and each of them, consists in the making of such sales, and in the case of each of said plaintiffs hundreds and in some cases thousands of such sales are made each day. Said act does not provide, nor has there otherwise been in any way established a standard by which to determine whether, in any particular instance, the rate or charge made is, in the sense of said act, just or unjust, reasonable or unreasonable, or whether the price exacted is, in the sense of said act, excessive or otherwise. As a result the plaintiffs are, and each of them is, subjected to the possibility of prosecution upon each and every of the many transactions in which it daily necessarily takes part.

A Federal grand jury has been summoned to attend at the session of this honorable court, to be held at Pueblo, Colorado, beginning on the first Tuesday in April, 1920, to wit, April 6th, 1920.
15 Defendant threatens to and will, unless prevented by the injunctive order of this honorable court, present to said grand jury charges against these plaintiffs, or a large number of them, alleging violation by them of said act of Congress and the amendment thereof, in respect to rates and charges made and prices exacted by them in handling or dealing in or with or selling wearing apparel and threatens to and will, unless prevented, urge, and if possible obtain, indictments upon such charges against plaintiffs or some of them, and their respective officers and agents, upon what he asserts to be numerous and almost innumerable violations of said act and threatens to, and unless prevented, will urge such prosecutions to final conclusion and institute and carry through a great multiplicity of like prosecutions, all to the great and irreparable damage of plaintiffs and each of them, as hereinafter set forth.

VII.

All such acts and threatened acts of the defendant are and must be based upon the assertion and contention that said act of Congress, as amended, is, so far as it applies to plaintiffs or any of them, valid and effective. But said act, as amended, now is and at all times has been wholly invalid and ineffective for the following reasons, to wit:

(a) It was enacted by Congress in the attempted exercise of a power not possessed by or delegated to it, but by Article X of the amendments to the Constitution of the United States expressly reserved to the States respectively or to the people.

(b) It was enacted by Congress in the attempted exercise of
16 the war powers conferred and delegated by section 8 of Article I of the Constitution of the United States, and particularly the provisions thereof authorizing Congress to "Declare war," to "Raise and support armies," to "Provide and maintain a Navy," to "Make rules for the government and regulation of the land and naval forces," and to "Make all laws which shall be necessary and proper for carrying into execution the foregoing powers." On October 22nd, 1919, the date when the amending act here involved was passed and approved, there existed no situation calling into play the war powers of Congress, and particularly none authorizing or permitting the exercise of such powers in respect to the particular matter which was the subject of said legislation. As a consequence said amending act, which constitutes the sole basis for the acts and threatened acts of the defendant directed at these plaintiffs, was and is wholly beyond the power of Congress and in conflict with Article X of the amendments to the Constitution of the United States.

(c) Said act of August 10th, 1917, both originally and as amended by said act of October 22nd, 1919, expressly asserted as the reason of and ground for its enactment, that it was "Essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy," and by section 24 of said act it was expressly provided "That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated." On October 22nd, 1919, when said amending act was passed and approved, and prior thereto, the war between the United States and Germany had actually terminated, the Army and Navy had been demobilized and reduced to a peace basis and there existed no situation calling into play the war powers of Congress and particularly none permitting or authorizing Con-
17 gress to deal, as it thereby attempts to do, with wearing apparel and with those concerned in or connected with handling, dealing in or with, or selling the same.

(d) Since said October 22nd, 1919, and prior to the time or to any of the times to which said prosecutions and threatened prosecutions relate, all of the activities of the Federal Government, which had

been called into play during the actual existence of said war with Germany, had terminated, and said act as amended inevitably became of no further force or effect. To now enforce or attempt to enforce the same necessarily attributes to Congress a power prohibited by Article X of the amendments to the Constitution of the United States.

(e) Under the circumstances as they existed on said October 22nd, 1919, and as they have at all times since existed, there was no such direct or other relationship between the matters and things referred to and provided for by the amending act of said date or any thereof (and especially the provisions of the same concerning wearing apparel), and the acts and activities of the United States or of the Congress of the United States in the proper exercise of its war powers, as to authorize or permit legislation of the character attempted by said amending act of October 22nd, 1919, as an exertion of such war power, or as a law necessary or proper for carrying such power into effect.

(f) Said amending act of October 22nd, 1919, and particularly section 2 thereof, whereby section 4 of the original act was amended, does not define the offense thereby denounced as a crime and
18 for which severe punishment and penalty is thereby provided, but leaves the definition thereof to the judgment and conscience of judges and juries in trials after the fact. Thereby said statute is necessarily an ex post facto law, in conflict with Article I, section 9, subdivision 3 of the Constitution of the United States.

(g) By reason of the facts last aforesaid, said amending act is likewise in conflict with and prohibited by Article VI of the amendments to the Constitution of the United States, in that no one accused of a violation of said act, especially in so far as it relates to wearing apparel, or the rates, charges, or prices made or exacted in handling, dealing in or with or selling the same, is or can be thereby informed of the nature or cause of the accusation against him, and no one at the time of the act which forms the basis of the charge can by any possibility, determine whether he is or is not violating said statute.

(h) Said amending act of October 22nd, 1919, and especially section 2 thereof amending section 4 of the original act, is in violation of and prohibited by Article VIII of the amendments to the Constitution of the United States in that thereby and thereunder excessive fines are to be and will be imposed and cruel and unusual punishments are to be and will be inflicted in this, to wit, that one who acts without intent to do wrong and with the honest intention and in the honest effort to do right and to comply strictly with the requirements of said act may be and in many cases certainly will be subjected to the imposition of an excessive fine in an amount as great as five thousand dollars and to a punishment which,
19 under such circumstances, would clearly be cruel and unusual, consisting of imprisonment for as much as two years or both such fine and such imprisonment.

(i) Said amending act of October 22nd, 1919, and particularly section 2 thereof amending section 4 of the original act, is in conflict with Article V of the amendments to the Constitution of the United States in that thereby plaintiffs, and each of them, and others similarly situated are deprived of their liberty and of their property without due or any process of law and their private property taken without just or any compensation; and in that thereby they are subjected to fine and imprisonment for an offense or offenses concerning which they were not and could not be previously informed and the commission of which they could not avoid because they had not been and could not be advised as to what act or acts could or did constitute such offense; and in that they are, and each of them is, and necessarily will be deprived of their and its liberty and property without due or any process of law, in that thereby they are and each of them is deprived of the liberty and private property right of making and carrying out such contracts as they or any of them may desire, concerning the handling or selling of or the dealing in wearing apparel, and particularly concerning the rates or charges made and the prices exacted therefor.

(j) The business in which plaintiffs are engaged, of buying, selling, and handling or dealing in or with wearing apparel is not one of such a public nature as to permit the regulation by public
20 authority of the practices, rates, charges, or prices employed, made or imposed in connection therewith. The act of Congress here involved constitutes an unwarrantable interference with and the deprivation of the right and liberty of private contract, and so deprives plaintiffs and each of them of their liberty and of their property without due or any process of law.

(k) As an attempted regulation of rates, charges, prices, or practices, said act of Congress is, as to these plaintiffs, wholly invalid and unconstitutional, because such power of regulation is in any event a legislative power and pertains to and may be exercised by the legislative branch of the Government only. But in and by said act of Congress the legislative department has not itself established or defined the basis of such regulation of rates, charges, prices, or practices, but has attempted thereby to delegate to a wholly different department or departments, to wit, to the judicial or to the executive, the right and the power in each particular instance, and by differing standards to so regulate, thereby violating the provisions of the Constitution of the United States and the amendments thereto, whereby the powers of government are classified and assigned to the three great departments, to wit, legislative, executive, and judicial, and each is prohibited from exerting or attempting to exert a power belonging to either of the others.

(l) The classification made in said act, and particularly in section 4 of said act of August 10th, 1917, as amended by section 2 of said act of October 22nd, 1919, whereby those engaged in certain
21 occupations, pursuits, and businesses, are wholly exempt from the operation thereof, is unjust, unreasonable, and arbitrary,

and deprives plaintiffs and each of them of their and its property and rights without due process of law.

(m) The penal causes contained in section 4 of said act of August 10th, 1917, as amended by section 2 of said act of October 22nd, 1919, are so unusual, excessive, cruel, and drastic as to render it impossible for plaintiffs to engage freely in or properly to carry on the trade and business to which their property and efforts hitherto have been and are now devoted. If said act be valid and enforcible, safety can be had only by completely withdrawing from and no longer engaging in said trade and business. No merchant can fix, impose, or exact any charge or price, no matter how entirely reasonable and wholly nonexcessive he may conscientiously believe it to be, without incurring the risk that if his judgment in that regard differs from that of some one else, he will be subjected to the heavy penalties, by fine or imprisonment, specified in said act. As a result, the business of plaintiffs and others similarly situated can not be conducted at all and must be abandoned, or to assure safety from attack and the possible imposition of the heavy penalties described the merchant must fix and maintain his prices and charges at a level so far below what, in his judgment, they ought reasonably and conscientiously to be, as to make it certain that no judge, jury, or prosecuting attorney could thereafter, by any possibility, conclude, however unjustly that the same were either unjust or unreasonable or excessive. Such a situation is intolerable and renders said statute, as amended, wholly invalid, because in conflict with and violative of the provisions of the fifth and eighth amendments to the Constitution of the United States.

22 (n) Said amending act of October 22nd, 1919, and particularly section 2 thereof amending section 4 of the original act being in conflict with and prohibited by the various constitutional provisions mentioned above and being for that reason and the others hereinabove specified, wholly invalid, and the standards which under said act defendant does and will apply being likewise as hereinbefore stated wholly improper, unwarranted, and unconstitutional, the acts of defendant as United States district attorney for the district of Colorado done and threatened to be done, by virtue of his official position, do, and will deprive plaintiffs and each of them and others similarly situated, of property without due or any process of law, in that the continuous and repeated harassment to which plaintiffs are and will be thereby subjected, the multiplicity of prosecutions threatened to be and which will be brought against them, the great number of informations and indictments threatened to be and which will be returned against them, have resulted and necessarily will result in great monetary loss to them and to each of them, in the substantial diminution if not the total destruction of the valuable property right known as good will now owned, possessed, and enjoyed by them and each of them, and in the great injury to, if not the utter destruction of, the established businesses

which they and each of them now own, possess, and enjoy. All of which is and will be in conflict with and prohibited by Article V of the amendments to the Constitution of the United States.

VIII.

On October 22, 1919, the date of the passage and approval of said amending act, by which alone and for the first time plaintiffs
23 and others similarly situated were brought within the purview of said act as amended, the occasion for the exercise of the war powers of the United States and particularly the exertion of such a specific power in that respect as that attempted to be exerted in the passage of said amending act had long since ceased to exist. Nearly a year prior to the date of the passage of said amending act hostilities had actually ceased and have never since been resumed. Prior to said date the war had actually ended and the military and naval forces of the United States had actually been demobilized and the former members thereof returned to civil life. Prior thereto the President of the United States had by official proclamation and messages to Congress proclaimed and announced that the war had ended and that peace had come; that war agencies and activities should be discontinued; that our enemies were impotent to renew hostilities; and that demobilization of the Army and Navy had been completely accomplished. As a matter of fact, prior to that date practically all war-time activities had ceased and the few which still continued were being rapidly brought to a close, trade with Germany had been resumed, the ocean cables which had theretofore been taken over by the Government had been returned to their owners, and the censorship of postal, telegraph and wire communications had been removed. As matters stood on said October 22, 1919, no ground existed which required, authorized or justified the exercise of the war power in the manner in which it was attempted to be exerted in the enactment of said amending statute; nor was the regulation of practices, rates, charges or prices engaged in, made or exacted in handling, selling or dealing in or with wearing apparel, which
24 was the sole object and purpose of said amending act (particularly the handling or selling thereof or the dealing therein or therewith in the District of Colorado) so connected with or related to any war power which then was or could be properly exercised or exercisable as to justify the invocation of such war powers in the enactment of said amending statute.

However, even though at the date of the enactment of said statute there had existed any cause or occasion which could justify the exertion of the war power in the manner thereby attempted (which, however, plaintiffs expressly deny) the fact is that since said date and long prior to the time when any of the acts occurred which defendant threatens to and will unless prevented make the basis of prosecutions against the plaintiffs, the situation so changed as to

utterly remove the faintest possibility of the further existence of any fact or facts which justified or would permit the further exertion of such a power as a war power or which would permit the further continuance in force of such an act of Congress or the further enforcement of or attempt to enforce the same. During the interval mentioned no new phase of war activity had taken place: not only had Germany's military power been completely destroyed, but she had yielded to a peace with all the late allies of the United States, which made a resumption of hostilities by her impossible: the telegraph and telephone lines which had theretofore been taken over and operated by the Government had been returned to their owners: the railroads of the United States which had theretofore been taken over and operated by the Government had been returned to their owners: the Fuel Administrator, who had been appointed and
25 who had acted under and by virtue of the statute here involved, had resigned, and the activities of the Fuel Administration had entirely ceased: all price fixing or attempt to fix prices by any of the agencies or in any of the ways specified in said statute, or otherwise, had long since ceased: and the President of the United States in a public statement had proclaimed and announced that the emergency which required such price fixing, particularly in respect to coal, had ceased to exist: no attempt has ever been made either under said act as amended or otherwise to fix the rates or charges or prices to be made or exacted in handling or dealing in or with or selling wearing apparel.

IX.

By reason of the total lack of any fixed standard by which to determine whether any particular rate or charge or price is reasonable or unreasonable, excessive or otherwise, plaintiffs cannot, nor can any one of them, nor can other merchants similarly situated, continue to engage in the business and trade to which their efforts and their capital hitherto have been and are now devoted, if said act as amended be valid and enforceable. The business in which they are engaged necessarily involves the fixing, making, and exacting of rates, charges, and prices, and cannot be conducted without so doing. But no merchant, no matter how careful and conscientious he may be, or how earnest and honest his effort to fix rates, charges, and prices which shall be just, reasonable, and not excessive, can know or have any reason to feel assured that someone else viewing the matter at a later date will reach the same conclusion as he has rela-
tive to reasonableness or propriety of any particular rate,
26 charge, or practice. As a result, the mere existence of such a statute as that here under consideration, and particularly the efforts and threats of defendant to enforce the statute here involved, necessarily inflict great injury and damage upon and immensely restrict and reduce the value of the established business of each of said plaintiffs and of all others similarly situated.

X.

Defendant herein, by virtue of his authority as United States district attorney, and assuming to act under and by virtue of the statute here involved, has insisted and continues to insist upon the right, through his agents and representatives, to enter the various places of business of the plaintiffs herein, to investigate their books and records, and otherwise to interfere with and impede the doing of the business of plaintiffs and each of them in an orderly and proper manner, to thereby greatly annoy and harass plaintiffs and their officials and employes and thereby to inflict upon plaintiffs and each of them great and irreparable injury. These things defendant threatens to and will continue to do unless prevented by order of this court.

XI.

Defendant has applied or is about to apply to this court for an order authorizing the issuance of subpœnas duces tecum, addressed to some of the plaintiffs herein and to their respective officers and representatives, and will, if possible, obtain and cause to be served such subpœnas, requiring the production of the books and records of such plaintiffs before the Federal grand jury which is to be in session at Pueblo, Colorado, beginning on April 6th, 1920.

27 Defendant threatens to and will, unless prevented by order of this Court, present to said grand jury, charges against certain of said plaintiffs that they have violated and are violating the provisions of said amended act here involved, will urge indictments upon said charges and will, if possible, obtain such indictments and press the prosecutions thereon. Defendant threatens to and will, unless prevented by order of this court, from time to time hereafter conduct like action against others, if not all, of the plaintiffs herein and others similarly situated. All of said plaintiffs are in the same situation; all have at all times earnestly, honestly, and conscientiously endeavored to make no unjust or unreasonable rate or charge and to exact no excessive price, and are continuing and will continue so to do. Notwithstanding this, all of them and all others similarly situated are exposed to and will suffer from the like procedure on the part of defendant. But in the nature of things, indictments can not and will not be returned against all of them, at the same time, nor will all of them be prosecuted collectively or simultaneously. An indictment or a prosecution for violation of said act against one or several of said merchants, however unjustified, and whatever the ultimate result of trial thereunder, will inevitably inflict upon the one or the ones so attacked, great, irreparable and immeasurable damage and injury, subject them to public odium, divert from them and to others in exactly the same situation except that they have not yet been publicly attacked, business which they otherwise would enjoy and thereby greatly diminish, if not utterly destroy the

established business and good will which has been the result of years of honest and earnest effort, and created by great expenditure of capital and energy. Thereby great, irreparable and immeasurable damage and loss will be inflicted.

XII.

Each sale made by a merchant constitutes, under the provisions of said act, a separate offense, if the rate or charge made be afterwards determined to be unjust or unreasonable or the price fixed or exacted excessive. But in the business of each of the merchants who are plaintiffs herein there are hundreds and in many cases thousands of such transactions each day. Defendant threatens to, and unless prevented by order of this court will, make many, if not every, of such transactions the basis of separate charges against said plaintiffs and others similarly situated. Thereby there will inevitably ensue an enormous multiplicity of criminal proceedings as a result of which plaintiffs and each of them must and inevitably will be subjected to great, irreparable, and immeasurable loss and damage, the grand juries and the courts flooded with repeated, prolonged, and expensive inquisition and litigation, and the Public Treasury subjected to great loss, all of which will be wholly unnecessary and improper, if, as plaintiffs contend, the act here involved be invalid.

XIII.

By reason of the facts hereinbefore set forth plaintiffs have no plain, speedy, or adequate or any remedy whatsoever at law. They are wholly without remedy save and except the remedy in equity here sought. Unless this bill be entertained and the relief here sought granted, plaintiffs and each of them will be and inevitably must be subjected to great, irreparable, and immeasurable loss and damage for which they would have and could have no remedy whatsoever.

XIV.

The question involved herein and presented hereby is one of common and general interest, not only to all of the plaintiffs named herein, but also to all other merchants and dealers in wearing apparel similarly situated. This suit, therefore, is brought not only on behalf of the plaintiffs named, but also on behalf of all others so similarly situated who may hereafter come in and be made parties plaintiff hereto, participate in the prosecution of this suit, and join in the expense thereof.

Wherefore plaintiffs pray:

1. That defendant may be required to answer this complaint but not under oath, answer under oath being hereby expressly waived.

2. That there be issued herein a preliminary or interlocutory injunction to remain in effect until the final hearing of this cause, pro-

hibiting the defendant, his agents and representatives and each of them, from enforcing or attempting to enforce against the plaintiffs herein or either or any of them or against the officers, agents, or representatives of them or either of them, said act approved August 10th, 1917, as amended by said act approved October 22nd, 1919, from prosecuting or attempting to prosecute, or instituting or attempting to institute any prosecution against them or either of them, under said act and from in any manner interfering with them or either of them or with the business of them or either of them, or taking or attempting to take any steps whatsoever in respect to them or either of them or the business of them or either of them, under or by virtue of any right or authority claimed to exist by reason of said act as amended or any part thereof; and that upon final hearing said injunction may be made permanent.

3. That the court declare and decree said act of August 10th, 1917, as amended by said act of October 22nd, 1919, and particularly section 1 of the said act of August 10th, 1917, as amended by section 1 of the said act of October 22nd, 1919, and section 4 of said act of August 10th, 1917, as amended by section 2 of said act of October 22nd, 1919, wholly invalid and of no effect as against these plaintiffs and each of them and all others similarly situated.

4. For such other, further and different relief as to the court may seem meet and just in the premises and for costs in this behalf expended.

G. C. BARTELS,
C. C. DORSEY,
Solicitors of Plaintiffs.

UNITED STATES OF AMERICA, AND STATE OF COLORADO, *City and County of Denver, ss:*

W. D. Downs, being first duly sworn, on his oath says: That he is treasurer of the Gano-Downs Clothing Company, one of the plaintiffs above named; that such plaintiff is a corporation and for that reason he makes this verification in its behalf; that the facts stated in the foregoing complaint are within his knowledge and therefore he makes this verification on behalf of all of the plaintiffs; that he has read the foregoing complaint and knows the contents thereof and the facts therein stated are true to the best knowledge and belief of affiant.

W. D. DOWNS.

Subscribed and sworn to before me this fifth day of April, 1920.
My commission expires:
My commission expires October 14, 1922.
[NOTARIAL SEAL.] CHESTER G. WESTON,
Notary Public.

(Note by clerk: Papers marked B, C, D, E, and F, affidavit, notice of application for preliminary injunction, motion to dismiss order of preliminary injunction, not copied here.)

[Filed May 8, 1920. Charles W. Bishop, clerk.]

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the District Court of the United States within and for the District of Colorado.

THE A. T. LEWIS & SON DRY GOODS COMPANY, THE Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neustetter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company, plaintiffs, v. HARRY B. TEDROW, AS UNITED STATES DISTRICT ATTORNEY for the district of Colorado, defendant.	No answer.

Comes now the defendant, Harry B. Tedrow, as United States district attorney for the district of Colorado, and for answer to the complaint of plaintiffs heretofore filed herein:

I.

Admits that each of said plaintiffs, except The May Department Stores Company, is and at all of the times with respect to which it is in said complaint mentioned, was a corporation duly organized and existing under the laws of the State of Colorado, and a citizen and resident of said State.

Admits that said The May Department Stores Company is and at all of the times with respect to which it is hereinafter men-
33 tioned was a corporation duly organized and existing under the laws of the State of New York, and a citizen and resident of said State, but by due compliance with the laws of the State of Colorado authorized to do and doing business in said State last mentioned.

Admits that this defendant is the duly appointed, commissioned, qualified, and acting United States district attorney for the District of Colorado, and is and at all of the times with respect to which he is in said complaint mentioned was a citizen and resident of said State.

II.

Admits that this is a suit of a civil nature and in equity; that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

Admits that this suit arises under the Constitution of the United States in that it necessarily involves and presents for decision the question of the validity, under the Constitution of the United States, of the said act of August 10, 1917, as amended October 22, 1919.

Admits that if said acts be enforced against these plaintiffs, as they will be if enforcement thereof be not enjoined, such enforcement would necessarily and certainly entail upon plaintiffs and upon each of them an expenditure in excess of the above amount, and would entail numerous prosecutions thereunder against plaintiffs and against each of them, and the possible imposition upon plaintiffs and each of them of penalties and expenses greatly in excess of the above amount.

III.

Admits that each of the plaintiffs has been for many years
34 and is now engaged as a retail merchant in buying and selling and in handling and dealing in and with wearing apparel, in the city and county of Denver, and elsewhere in the State and District of Colorado.

Admits that each of the said plaintiffs has so conducted its said business that it now has thousands of customers and a well established trade and has created and now owns, in addition to its tangible property and assets and its very great investment therein, a good will of immense value and constituting one of its most important and valuable assets.

Admits that each of the plaintiffs now has on hand a large stock of wearing apparel which it has acquired and carried at a great cost and by the investment of large sums of money and likewise has invested a great amount of money in providing a suitable place or places of business and the necessary fixtures and appurtenances connected therewith.

As to whether or not any combination of any kind does now exist or has at any time existed between or among plaintiffs to fix or otherwise affect the selling price of any article of wearing apparel dealt in by any of them, and as to whether or not unrestricted competition has always existed and does now exist between them, this defendant is without knowledge.

IV.

Defendant admits that on October 22, 1919, section 1 of the act of August 10, 1917, was amended to read as set forth in said Paragraph IV of said complaint, and that the sole apparent purpose and the sole effect of said amendment of section 1 was to include among other articles designated in said act, as necessaries, wearing apparel, which, in the act as originally passed, had not been so designated.

35 Admits that on October 22, 1919, in and by section 2 of said act, section 4 of said act of August 10, 1917, was amended so as to read as set forth in said Paragraph IV.

Admits that by section 24 of said act of August 10, 1917, of which act the amendments made by the act approved October 22, 1919, became a part, it was and is provided as set forth in said Paragraph IV.

V.

Defendant admits that in his capacity as United States district attorney for the District of Colorado, he has been and still is claiming, asserting, and charging that the plaintiffs have been and now are and that each of them has been and now is, in violation of the act of Congress and the amendment thereof aforesaid, making unjust and unreasonable rates and charges in handling and dealing in and with wearing apparel, and charging excessive prices therefor. Denies that the plaintiffs have, or that either of them has, at all times or any time, earnestly or conscientiously or at all endeavored to fix, make, or exact only such rates, charges, and prices as were in view of all relevant facts, just and reasonable and not excessive, and denies that plaintiffs or any of them have not at any time consciously or at all made or exacted any rate, charge, or price which was either unjust or unreasonable or excessive.

Admits that defendant, deeming it his duty so to do, under the terms of said act of Congress, as amended, and entertaining different views from plaintiffs as to what constitutes just, reasonable, and non-excessive rates, charges, and prices, and applying different standards in making the determination, has threatened to and, unless prevented by injunctive order of this honorable court, will institute numerous prosecutions against the plaintiffs, and each of them, for violations of said act of Congress, will file informations and procure or attempt to procure indictments against them and thereby and otherwise subject them to numerous prosecutions for alleged violations of said act.

36

Admits that defendant insists and will insist that in determining whether any particular rate, charge, or price for wearing apparel is just or unjust, reasonable or unreasonable, excessive or non-excessive, sole regard must be had to the actual original cost to the merchant of the particular and specific article in question, and that the present value thereof, at the time when the merchant fixes, makes or exacts the rate, charge, or price thereof, cannot be taken into consideration, and that solely by virtue of the authority and power vested in defendant because of his official position, he will, by insistence upon such standard, institute and press prosecutions against plaintiffs and each of them, and seek and procure indictments against them and each of them, unless prevented by this honorable court.

But, answering further, in this connection, this defendant alleges that in addition to what has been hereinabove admitted, he insists and proposes to and will institute and press prosecutions against plaintiffs and each of them and seek and procure indictments

against them and each of them, unless prevented by this honorable court, for certain other rates, charges, and prices for wearing apparel not hereinabove referred to, and that he insists and will insist that in determining whether these certain other rates, charges, and prices for wearing apparel are just or unjust, reasonable or unreasonable, excessive or nonexcessive, regard must be had to the
37 actual market value at the time of sale by the merchant of the particular and specific article in question, and that the standard by which it is to be determined whether these certain other rates, charges, or prices for wearing apparel are just or unjust, reasonable or unreasonable, excessive or nonexcessive, regard must be had to the actual market value at the time of sale: and that, solely by virtue of the authority and power vested in defendant because of his official position, he will, by insistence upon such standard of market value, institute and press prosecutions against plaintiffs and each of them, and seek and procure indictments against them and each of them, unless prevented by this honorable court.

Admits that for the past several years, and particularly during the latter part of said period, the actual costs to merchants of the wearing apparel in which they deal have been rapidly and at frequent intervals advanced.

Admits that as a consequence each of the plaintiffs and every merchant dealing in wearing apparel has in his stock numerous articles of exactly the same kind and quality, which, however, represent to him greatly differing costs.

Denies that the actual fair value of such articles of merchandise and each thereof has, since the same were placed in the stock of said merchant, advanced rapidly or materially.

Denies that such alleged or any increments in value are the private property of the merchant in each or any instance, as much so as the article of wearing apparel itself, or that each merchant has a right assured to him by the Constitution of the United States to the benefit or enjoyment thereof.

Admits that the position assumed and insisted upon, and which will be persisted in by defendant, does and will necessarily result in
38 depriving the plaintiffs herein, and each of them and every such merchant in wearing apparel, of all benefit of such increment in value and will subject them and each of them to the risk of the heavy punishment and penalty imposed by the act here involved, whenever they seek to avail themselves thereof or to take the benefit of the same. But, as aforesaid, this will be defendant's position and insisted upon by him in a part but not all of the cases which he proposes to present to said grand jury and in a part but not all of the cases which he proposes to institute and press prosecutions against plaintiffs and each of them. The position which this defendant has assumed and insisted upon, and which will be persisted in by defendant in connection with other and different cases which he proposes to present to said grand jury and in which he proposes to institute and press prosecutions against plaintiffs and

each of them, is and will be that regard must be had to the actual market value at the time of sale by the merchant of the particular and specific article in question, and that the standard by which it is to be determined whether any particular rate, charge, or price for wearing apparel is just or unjust, reasonable or unreasonable, excessive or nonexcessive, regard must be had to such actual market value at the time of sale.

Denies that the plaintiffs have a constitutional or any right to avail themselves of the benefits of said alleged increments and denies that the position assumed and insisted upon, and which will be persisted in by defendant, that sole regard must be had to the actual original cost to the merchant of the particular and specific article in question or the position assumed and insisted upon and which will be persisted in by defendant, in connection with other and different rates, charges, or prices for wearing apparel, that regard
39 must be had to the actual market value at the time of sale, or either or both of said positions, will be in conflict with or prohibited by Article V of the amendments to the Constitution of the United States.

Denies that if specific articles of wearing apparel should be by the individual merchant priced with sole reference to the actual original cost of each of said articles, instead of in accordance with the present fair value thereof, or in accordance with the average of the actual original cost to the merchant of such and like articles in his stock, the result would be, that in the stock of each of these plaintiffs, or of any other merchant in wearing apparel, great or any numbers of articles exactly alike, either or both in kind or quality, and differing only in respect to the date of their acquisition by the merchant, would bear wholly or any different or widely divergent prices, either or both in the case of each merchant or in the case of every or any merchant, when compared with all or any other merchants, or that such would thus produce a situation rendering it wholly or at all impossible to properly or at all conduct or continue in the business of merchandising in wearing apparel, or produce such a state of confusion as to totally or at all destroy the business.

Denies that the result thereof to the members of the public who deal or have been accustomed to deal with the plaintiffs herein or other merchants in wearing apparel would be wholly or at all intolerable.

Denies that this would be in conflict with or prohibited by the fifth or any article or provision of the Constitution of the United States or any amendment thereof.

40 VI.

Admits that notwithstanding the provision of the first section of said act quoted above that "The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act," the fact is that with respect to

wearing apparel, no such regulations have been made and no such order or orders issued, either by or for the President or otherwise, or at all, and that in respect to the sale of wearing apparel, no prices, rates, or charges whatsoever have been fixed, either by the President or on his behalf, or by any official, body, or agency, or otherwise, or at all, for the guidance of persons handling or dealing in the same, nor have any steps been taken so to do.

Admits that under the terms of said act, each sale at retail of any article of wearing apparel constitutes or may constitute a violation of said act.

Admits that the sole business of plaintiffs, and each of them, consists in the making of such sales, and in the case of said plaintiffs hundreds, and in some cases thousands, of such sales are made each day.

Denies that said act does not provide, nor that there has not otherwise been established, a standard by which to determine whether, in any particular instance, the rate of charge made is, in the sense of said act, just or unjust, reasonable or unreasonable, or whether the price exacted is, in the sense of said act, excessive or otherwise.

Admits that the plaintiffs are, and each of them is, subjected to the possibility of prosecution upon each and every of the many transactions in which it daily necessarily takes part, in this and in this only: that it is so subjected in instances only in connection with its
41 transactions where it has violated said act of August 10, 1917, as amended October 22, 1919, and not otherwise.

Admits that a Federal grand jury has been summoned to attend and is now in attendance at the session of this honorable court, at Pueblo, Colorado, since April 6, 1920.

Admits that defendant threatens to and will, unless prevented by the injunctive order of this honorable court, present to said grand jury charges against these plaintiffs, or a large number of them, alleging violation by them of said act of Congress and the amendment thereof, in respect to rates and charges made and prices exacted by them in handling and dealing in and with and selling wearing apparel and that defendant threatens to and will, unless prevented, urge and, if possible, obtain indictments upon such charges against plaintiffs or some of them, and their respective officers and agents, upon what defendant asserts to be many violations of said act, and threatens to and, unless prevented, will urge such prosecutions to final conclusion and institute and carry through a great many of like prosecutions, but as to whether same will be to the great or irreparable damage of plaintiffs and each of them, as in said complaint set forth, defendant is without knowledge.

VII.

Admits that all such acts and threatened acts of the defendant are and must be based upon the assertion and contention that said act of Congress, as amended, is, so far as it applies to plaintiffs or any of them, valid and effective.

Denies that said act, as amended, now is or at all times or
42 at any time has been in any wise invalid or ineffective for any reason whatsoever.

(a) Denies that it was enacted by Congress in the attempted exercise of a power not possessed by or delegated to it, but by Article X of the amendments to the Constitution of the United States expressly reserved to the States respectively, or to the people.

(b) Admits that it was enacted by Congress in the exercise, among other things, of the war powers conferred and delegated by section 8 of article 1 of the Constitution of the United States and the provisions thereof authorizing Congress to "declare war," to "raise and support armies," to "provide and maintain a Navy," to "make rules for the government and regulation of the land and naval forces" and to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Denies that on October 22, 1919, the date when the amending act here involved was passed and approved, there existed no situation calling into play the war powers of Congress, or particularly none authorizing or permitting the exercise of such powers in respect to the particular matter which was the subject of said legislation. Denies that, as a consequence, or at all, said amending act, which constitutes the sole basis for the acts and threatened acts of the defendant directed at these plaintiffs, was or is wholly beyond the power of Congress or in conflict with Article X of the amendments to the Constitution of the United States.

(c) Admits that said act of August 10, 1917, both originally and as amended by said act of October 22, 1919, expressly asserted
43 as the reason and ground for its enactment that it was "Essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy," and by section 24 of said act it was expressly provided "That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated." Denies that on October 22, 1919, when said amending act was passed and approved, or prior thereto, or at all, the war between the United States and Germany had or has actually terminated, the Army or Navy demobilized or reduced to a peace basis or that there existed no situation calling into play the war powers of Congress or particularly none permitting or authorizing Congress to deal, as it did, with wearing apparel or with those concerned in or connected with handling, dealing in or with or selling the same.

(d) Denies that since October 22nd, 1919, or prior to the time or to any of the times to which said prosecutions and threatened prosecutions relate, all of the activities of the Federal Government, which had been called into play during the actual existence of said war with Germany, had terminated, and denies that said act as amended inevitably or at all became of no further force or effect. Denies that to now enforce or attempt to enforce the same necessarily or

at all attributes to Congress a power prohibited by Article X of the amendments to the Constitution of the United States.

(e) Denies that under the circumstances as they existed on October 22, 1919, or as they have at all times since existed, there was or is no such direct or other relationship between the matters and things referred to or provided for by the amending act of said date or any thereof (especially the provisions of the same concerning wear-
44 ing apparel), or the acts or activities of the United States or of the Congress of the United States in the proper exercise of its war powers, as to authorize or permit legislation of the character attempted by said amending act of October 22, 1919, as an exertion of such war power, or as a law necessary or proper for carrying such power into effect.

(f) Denies that said amending act of October 22, 1919, and particularly section 2 thereof, whereby section 4 of the original act was amended, does not define the offense thereby denounced as a crime and for which severe punishment and penalty is thereby provided, but leaves the definition thereof to the judgment and conscience of judges and juries in trials after the fact. Denies that thereby said statute is necessarily or at all an ex post facto law in conflict with Article I, section 9, subdivision 3 of the Constitution of the United States.

(g) Denies that by reason of the facts last aforesaid, or for any other reason, said amending act is in conflict with or prohibited by Article VI of the amendments to the Constitution of the United States, in that no one accused of a violation of said act, especially in so far as it relates to wearing apparel or the rates, charges or prices made or exacted in handling, dealing in or with or selling the same, is or can be thereby informed of the nature or cause of the accusation against them, or that no one, at the time of the act which forms the basis of the charge, can by any possibility determine whether he is or is not violating said statute.

(h) Denies that said amending act of October 22, 1919, and especially section 2 thereof amending section 4 of the original act,
45 is in violation of or prohibited by Article VIII of the amendment to the Constitution of the United States in that, thereby and thereunder, excessive fines are to be and will be imposed or cruel or unusual punishments are to be and will be inflicted in this, that one who acts without intent to do wrong and with the honest intention and in the honest effort to do right and to comply strictly with the requirements of said act, may be and in many cases certainly will be subjected to the imposition of an excessive fine in an amount as great as five thousand dollars or to a punishment which, under such circumstances, would clearly be cruel and unusual, consisting of imprisonment for as much as two years or both such fine and such imprisonment.

(i) Denies that said amending act of October 22, 1919, and particularly section 2 thereof amending section 4 of the original act, is in conflict with Article V of the amendments to the Constitution of the

United States in that thereby plaintiffs, and each of them, and others similarly situated, are deprived of their liberty or of their property without due or any process of law or their private property taken without just or any compensation; or in that thereby they are subjected to fine or imprisonment for an offense or offenses concerning which they were not and could not be previously informed and the commission of which they could not avoid because they had not been and could not be advised as to what act or acts could or did constitute such offense; or in that they are, and each of them is, and necessarily will be, deprived of their and its liberty and property without due or any process of law, in that thereby they are and each of them is deprived of the liberty and private property right of making and carrying out such contracts as they or any of them may desire, concerning the handling or selling of or the dealing in wearing
46 apparel, and particularly concerning the rates or charges made and prices exacted therefor.

(j) Denies that the business in which plaintiffs are engaged, of buying, selling, and handling or dealing in or with wearing apparel, is not one of such a public nature as to permit the regulation by public authority of the practices, rates, charges, or prices employed, made or imposed in connection therewith. Denies that the act of Congress here involved constitutes an unwarrantable or any interference with or deprivation of the right or liberty of private contract or so deprives plaintiffs and each of them of their liberty or of their property without due or any process of law.

(k) Denies that as an attempted regulation of rates, charges, prices, or practices, said act of Congress is, as to these plaintiffs, wholly invalid and unconstitutional, because such power of regulation is in any event a legislative power and pertains to and may be exercised by the legislative branch of the Government only. Denies that in and by said act of Congress the legislative department has not itself established or defined the basis of such regulation of rates, charges, prices, or practices, but has attempted thereby to delegate to a wholly different department or departments, to wit, to the judicial or to the executive, the right and the power in each particular instance, and by differing standards, to so regulate, thereby violating the provisions of the Constitution of the United States and the amendments thereto, whereby the powers of the Government are classified and assigned to the three great departments, to wit, legislative,
47 executive, and judicial, and each is prohibited from exerting or attempting to exert a power belonging to either of the others.

(l) Denies that the classification made in said act, and particularly in section 4 of said act of August 10, 1917, as amended by section 2 of said act of October 22, 1919, whereby those engaged in certain occupations, pursuits, and businesses are wholly exempt from the operation thereof, is unjust, unreasonable, or arbitrary, or deprives plaintiffs and each of them of their and its property and rights without due process of law.

(m) Denies that the penal clauses contained in section 4 of said act of August 10, 1917, as amended by section 2 of said act of October 22, 1919, are so unusual, excessive, cruel, or drastic as to render it impossible for plaintiffs to engage freely in or properly to carry on the trade or business to which their property and efforts hitherto have been and are now devoted. Denies that if said act be valid and enforceable, safety can be had only by completely withdrawing from and no longer engaging in said trade or business. Denies that no merchant can fix, impose, or exact any charge or price, no matter how entirely unreasonable or nonexcessive he may conscientiously believe it to be, without incurring the risk that if his judgment in that regard differs from that of some one else, he will be subjected to the heavy penalties, by fine and imprisonment, specified in said act. Denies that as a result the business of plaintiffs and others similarly situated can not be conducted at all and must be abandoned, or to insure safety from attack and the possible imposition of the heavy penalties described, the merchant must fix and maintain his prices and charges at a level so far below
48 what, in his judgment, they ought reasonably and conscientiously to be, as to make it certain that no judge or prosecuting attorney could thereafter, by any possibility, conclude, however unjustly, that the same were unjust or unreasonable or excessive. Denies that such a situation is intolerable or renders said statute, as amended, wholly or at all invalid, because in conflict with or violative of the provisions of the fifth or eighth amendments to the Constitution of the United States.

(n) Denies that said amending act of October 22, 1919, and particularly section 2 thereof amending section 4 of the original act, are in conflict with or prohibited by the various constitutional provisions mentioned, or either or any of them, and denies that for that or any other reason the same is wholly or at all invalid; denies that the standards which under said act defendant does and will apply are wholly or at all improper, unwarranted, or unconstitutional, and denies that the acts of defendant as United States district attorney, or any of them, done or threatened to be done by virtue of his official position, do or will deprive plaintiffs, or either or any of them or others similarly situated, of property without due or any process of law, in that the continued or repeated harassment to which plaintiffs are and will be thereby subjected, the multiplicity of prosecutions threatened to be and which will be brought against them, the great number of informations or indictments threatened to be and which will be returned against them, have resulted or necessarily will result in great monetary loss to them or to
49 each of them, in the substantial diminution, if not the total destruction of the valuable property right known as good will, now owned, possessed, or enjoyed by them or either of them, or in the great injury to, if not the utter destruction of the established businesses which they or each of them now own, possess, or

enjoy. Denies that all of which, or any thereof, will be in conflict with or prohibited by Article V of the amendments to the Constitution of the United States.

50 VIII.

Denies that on October 22, 1919, the date of the passage and approval of said amending act, by which alone and for the first time plaintiffs and others similarly situated were brought within the purview of said act as amended, the occasion for the exercise of the war powers of the United States and particularly the exertion of such a specific power in that respect as that attempted to be exerted in the passage of said amending act had long or at all ceased to exist.

Denies that nearly a year prior to the date of the passage of said amending act hostilities had actually ceased or that they have never since been resumed.

Denies that prior to said date the war had actually ended or that the military or naval forces of the United States had actually been demobilized or the former members thereof returned to civil life.

Denies that prior thereto the President of the United States had by official proclamation or messages to Congress proclaimed or announced that the war had ended or that peace had come; that war agencies or activities should be discontinued; that our enemies were impotent to renew hostilities; or that demobilization of the Army or Navy had been completely accomplished.

Denies that, as a matter of fact, prior to that date practically all wartime activities had ceased or that the few which still continued were being rapidly brought to a close, or that trade with Germany had been resumed. Admits that the ocean cables which had theretofore been taken over by the Government had been returned to their owners and the censorship of postal, telegraph, and wire communications had been removed.

51 Denies that as matters stood on October 22, 1919, no ground existed which required, authorized, or justified the exercise of the war power in the manner in which it was attempted to be exerted in the enactment of said amending statute; denies that the regulation of practices, rates, charges, or prices engaged in, made or exacted in handling, selling, or dealing in or with wearing apparel, which was one of the objects and purposes of said amending act (particularly the handling or selling thereof or the dealing therein or therewith in the district of Colorado), was so connected with or related to any war power which then was or could be properly exercised or exercisable as to justify the invocation of such war powers in the enactment of said amending statute.

Denies that since said date or long prior to the time when any of the acts occurred which defendant threatens to and unless prevented will make the basis of prosecutions against the plaintiffs, the situ-

ation so changed as to utterly or at all remove the possibility of the further existence of any fact or facts which justified or would permit the further exertion of such a power as a war power or which would permit the further continuance in force of such an act of Congress or the further enforcement of or attempt to enforce the same.

Denies that during the interval mentioned no new phase of war activity had taken place, denies that Germany's military power had been completely destroyed and that she had yielded to a peace with all the late allies of the United States, which made a resumption of hostilities by her impossible.

52 Admits that the telegraph and telephone lines which had theretofore been taken over and operated by the Government had been returned to their owners; that the railroads of the United States which had been theretofore taken over and operated by the Government have been returned to their owners; that the Fuel Administrator, who had been appointed and who had acted under and by virtue of the statute here involved had resigned, but denies that the activities of the Fuel Administration had entirely or at all ceased; denies that all or any price fixings or attempts to fix prices by any of the agencies or in any of the ways specified in said statute, or otherwise, had long since or at all ceased; admits that the President of the United States, in a public statement announced on March 23, 1920, said, among other things, respecting coal that "unless and until some grave emergency shall arise, which in my judgment has a relation to the emergency purposes of the Lever Act, I would not feel justified in fixing coal prices with reference to future conditions of production."

Denies that no attempt has ever been made either under said act as amended or otherwise to fix the rates or charges or prices to be made or exacted in handling or dealing in or with or selling wearing apparel.

IX.

Denies that by reason of the total or any lack of any fixed standard by which to determine whether any particular rate or charge or price is reasonable or unreasonable, excessive or otherwise, plaintiffs cannot, nor can any of them, nor can other merchants similarly situated, continue to engage in the business or trade to which their efforts or their capital hitherto have been or are now devoted, if said

53 act as amended be valid or enforceable.

Admits that the business in which they are engaged necessarily involves the fixing, making, and exacting of rates, charges, and prices and cannot be conducted without so doing.

Denies that no merchant, no matter how careful or conscientious he may be, or how earnest or honest his efforts to fix rates, charges, or prices which shall be just, reasonable or not excessive, can know

or have any reason to feel assured that some one else viewing the matter at a later date will reach the same conclusion as he has relative to reasonableness or propriety of any particular rate, charge, or practice. Denies that as a result the mere existence of such a statute as that here under consideration, and particularly the efforts or threats of defendant to enforce the statute here involved, necessarily inflict great or any injury or damage upon or immensely restrict or reduce the value of the established business of each of said plaintiffs or others similarly situated.

X.

Denies that defendant, by virtue of his authority as United States attorney, and assuming to act under or by virtue of the statute here involved, or otherwise or at all, has insisted or continues to insist upon the right, through his agents or representatives, to enter the various places of business of the plaintiffs herein, to investigate their books or records or otherwise to interfere with or impede the doing of the business of plaintiffs or either of them in an orderly or proper manner, to thereby or at all annoy or harrass plaintiffs or their officials or employes or thereby to inflict upon plaintiffs or either of them great or irreparable or any injury. Denies that these
54 things defendant threatens to and will continue to do unless prevented by order of this court. But this defendant in this connection says that through the regular and lawful methods of subpoenas he has insisted and continues to and will insist upon the right to investigate the books and records of plaintiffs and each of them.

XI.

Admits that defendant has applied and is about to apply to this court for orders authorizing the issuance of subpœnas duces tecum, addressed to some of the plaintiffs herein and to their respective officers and representatives, and will, if possible, obtain and cause to be served such subpœnas, requiring the production of the books and records of such plaintiffs before the Federal grand jury which is now in session at Pueblo, Colorado. That under and by virtue of a rule of court it is necessary for defendant to apply for and procure an order from the court for the issuance of such subpœnas duces tecum.

Defendant admits that he threatens to and will, unless prevented by order of this court, present to said grand jury, charges against certain of said plaintiffs that they have violated and are violating the provisions of said amended act here involved, will urge indictments upon said charges and will, if possible, obtain such indictments and press the prosecutions thereon.

Admits that defendant threatens to and will, unless prevented by order of this court, from time to time hereafter conduct like action against others, if not all, of the plaintiffs herein and others similarly situated.

As to whether all of said plaintiffs are in the same situation, defendant has no knowledge.

55 Denies that all or any of said plaintiffs have at all times or any time earnestly, honestly, or conscientiously endeavored to make no unjust or unreasonable rate or charge or to exact no excessive price, or are continuing or will continue so to do.

As to whether all of plaintiffs or all other similarly situated are exposed to or will suffered from the like procedure on the part of defendant, defendant at this time has no knowledge. But defendant avers that against all of plaintiffs and against all others similarly situated whom he has reason to believe have violated the act of August 10, 1917, as amended he proposes to and will, unless enjoined by this honorable court, present the facts to said grand jury, with view to indictment.

As to whether indictments cannot or will not be returned against all of them at the same time this defendant has no knowledge, but defendant denies that all of them cannot be prosecuted collectively and simultaneously.

Denies that an indictment or a prosecution for violation of said act against one or several of said merchants, or whatever the ultimate result of trial thereunder, will inevitably or at all inflict upon the one or the ones so attacked great, irreparable or immeasurable damage or injury, subject them to public odium, divert from them and others in exactly the same situation except that they have not yet been publicly attacked, business which they would otherwise enjoy or thereby greatly diminish, if not utterly destroy the established business and good will which has been the result of years of honest and earnest effort, and created by great expenditure of capital and energy. Denies that thereby great, irreparable or immeasurable damage or loss will be inflicted.

56 Admits that each sale made by a merchant may constitute, under the provisions of said act, a separate offense if the rate or charge be unjust or unreasonable or the price fixed or exacted excessive.

Admits that in the business of each of the merchants who are plaintiffs herein there are hundreds and in many cases thousands of such transactions each day.

Admits that defendant threatens to, and unless prevented by order of this court will, make many of such transactions the basis of separate charges against said plaintiffs and others similarly situated; provided that such transactions violate the provisions of the act of August 10, 1917, as amended.

Denies that thereby there will inevitably ensue an enormous multiplicity of criminal proceedings as a result of which plaintiffs and each of them must and inevitably will be subjected to great, irreparable, or immeasurable loss or damage, or the courts flooded with repeated, prolonged, or expensive inquisition or litigation or the Public Treasury subjected to great loss. But defendant admits that, unless prevented from so doing, he will, in the regular and lawful manner as United States district attorney, proceed to the prosecution of such violations by plaintiffs of said act as amended, with the necessary result that some cases, but how many he can not say, may be filed in court, litigation occur thereunder, and such expense attend thereon as is necessarily incident thereto. Denies that such is wholly or at all unnecessary or improper, and denies that said act is invalid.

XIII.

Denies that by reason of the facts hereinbefore set forth, or otherwise or at all, plaintiffs have no plain, speedy, or adequate, or any remedy whatsoever at law. Denies that they are wholly or at
57 all without remedy save and except the remedy in equity here sought. Denies that unless this bill be entertained and the relief here sought granted, plaintiffs and each of them will be and inevitably must be subjected to great, irreparable, or immeasurable loss and damage for which they would have and could have no remedy whatsoever.

XIV.

Admits that the question involved herein and presented hereby is one of common and general interest, not only to all of the plaintiffs named herein, but also to all other merchants and dealers in wearing apparel similarly situated.

Wherefore, having thus made a full answer to all the matters and things contained in the bill, this defendant prays that the bill be dismissed and for judgment for his costs in this behalf incurred.

HARRY B. TEEGOW, *Pro Se.*

58 [Filed May 8, 1920. Charles W. Bishop, clerk.]

In the District Court of the United States for the District of Colorado.

In Equity. No. —.

The A. T. Lewis & Son Dry Goods Company, The Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neustetter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company, plaintiffs.	No. 7027. Stipulation.
v.	
Harry B. Tedrow, as United States District attorney for the District of Colorado, defendant.	

It is hereby stipulated and agreed that this cause is within the equity jurisdiction of this court and that the relief sought is within the power of the court as a court of equity: any and all objections based upon alleged lack of jurisdiction or power as a court of equity are hereby expressly waived.

Harry B. Tedrow,
United States District Attorney for the District of Colorado pro se.
C. C. Dorsey,
G. C. Bartels,
Solicitors for Plaintiffs.

59 [Filed May 8, 1920. Charles W. Bishop, clerk.]

In the District Court of the United States for the District of Colorado.

THE A. T. LEWIS & SON DRY GOODS COMPANY, The Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neusteter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company, plaintiffs,	In Equity. No. -----
vs.	
HARRY B. TEDROW, AS UNITED STATES DISTRICT attorney for the District of Colorado, defendant.	

Agreed statement of facts.

To avoid voluminous proofs, to shorten the record and to expedite the final hearing, the following facts are agreed to (subject, however, to any and all objections to the same or to any part thereof, because of claimed irrelevance or immateriality, and the right to interpose such objections at any stage of this proceeding is hereby expressly reserved to each of the parties hereto):

I.

WAR WITH GERMANY.

1. The armistice was signed on November 11th, 1918. At that time actual hostilities ceased and have not since been resumed. Said armistice agreement with its annexes and conventions is published as Senate Document 147, sixty-sixth Congress, first sesstion, and may be referred to by either party in this or in the appellate court with the same force and effect as though it had been intro-
60 duced in evidence.

2. On November 11th, 1918 (Official U. S. Bulletin, November 11th, 1918, page 5) the President in an address to Congress announcing the terms of the armistice stated among other things:

"The war thus comes to an end; for having accepted these terms of armistice it will be impossible for the German command to renew it. It is not now possible to assess the consequences of this great consummation. We know only that this tragical war whose con-

suming flames swept from one nation to another until all the world was on fire is at an end and that it was the privilege of our own people to enter it at its most critical juncture in such fashion and in such force as to contribute, in a way of which we are all deeply proud, to the great result. We know, too, that the object of the war is attained; the object upon which all free men had set their hearts; and attained with sweeping completeness which even now we do not realize."

3. On November 18th, 1918 (Official U. S. Bulletin, November 18th, 1918, page 1) the President issued his Thanksgiving proclamation, in which, among other things, it was stated:

"This year we have special and moving cause to be grateful and to rejoice. God has in His good pleasure given us peace. It has not come as a mere cessation of arms, a mere relief from the strain and tragedy of war. It has come as a great triumph of right. Complete victory has brought us not peace alone, but the confident promise of a new day as well, in which justice shall replace force and jealous intrigue among the nations."

4. On December 2d, 1918 (Official U. S. Bulletin, pages 1, 5, 6, 7, and 8) the President in his address to Congress referred to "the great processes by which the war was pushed irresistibly forward to the final triumph:" stated that "the war could not have been won or the gallant men who fought it given an opportunity to win it otherwise" if those at home had not done their duty; that after Chauteau-Thierry "it was only a scant four months before the commanders of the Central Empires knew themselves beaten;
61 and now their very Empires are in liquidation:" that "while the war lasted we set up many agencies by which to direct the industries of the country:" that "if the war had continued it would have been necessary to raise" certain amounts by taxation: that "it was necessary that the administration of the railways should be taken over by the Government so long as the war lasted * * * but all these necessities have now been served, and the question is, What is best for the railroads and for the public in the future?" again:

"And now we are sure of the great triumph for which every sacrifice was made. It has come, come in its completeness; and, with the pride and inspiration of these days of achievement quick within us, we turn to the tasks of peace again * * * a peace secure against the violence of irresponsible monarchs and ambitious military coteries, and are made ready for a new order, for new foundations of justice and fair dealing. We are about to give order and recognition to this peace not only for ourselves but for the other peoples of the world as well, so far as they will suffer us to serve them. * * * So far as our domestic affairs are concerned the problem of our return to peace is a problem of economic and industrial readjustment. * * * It is surprising how fast the process of return to a peace footing has moved in the three weeks since the fighting stopped. It promises to outrun any inquiry that may be instituted

and any aid that may be offered. It will not be easy to direct it any better than it will direct itself. The American business man is of quick initiative."

5. On June 28th, 1919, the treaty of peace with Germany was signed at Versailles by the treaty plenipotentiaries of Germany and of the Allied Powers including the United States. Said treaty is set forth at length in the Congressional Record of July 10th, 1919, pages 2475 et seq., and may be referred to by either party in this court or in the appellate court with the same force and effect as
62 though it had been formally offered in evidence. Said treaty was ratified on July 10th, 1919, by Germany; on July 25th, 1919, and July 31st, 1919, by the British Parliament and King George, respectively; on October 7th, 1919, by Italy; on October 13th, 1919, by France; and on October 27th, 1919, by Japan. It has also been ratified by all of the other allied and associated powers therein mentioned, with the possible exception of China, other than the United States. It has not as yet been ratified by the Senate of the United States, but it has there twice failed of ratification, once on November 19th, 1919, and again on March 19th, 1920, when it was returned to the President (Congressional Record, March 19th, 1920, pages 4915–4917).

6. On July 10th, 1919 (Congressional Record of that date, page 2472), the President in his address to the Senate when he presented the treaty to it for ratification, among other things, said: "The war ended in November, eight months ago."

7. On October 27th, 1919 (Congressional Record of that date, page 8063), the President in his message to Congress accompanying the veto of the Volstead Prohibition Act, among other things, said:

"I object to and can not approve that part of this legislation with reference to war-time prohibition. It has to do with the enforcement of an act which was passed by reason of the emergencies of the war and whose objects have been satisfied in the demobilization of the Army and Navy and whose repeal I have already sought at the hands of Congress. Where the purposes of particular legislation arising out of war emergency have been satisfied, sound public policy makes clear the reason and necessity for repeal."

8. On November 11th, 1919, in a public proclamation issued in commemoration of the signing of the armistice one year before, the President, among other things, said:

"A year ago to-day our enemies laid down their arms in accordance with an armistice which rendered them impotent to re-
63 new hostilities and gives to the world an assured opportunity to reconstruct its shattered order and to work out in peace a new and juster set of international relations. * * * Our power was a decisive factor in the victory. * * * Out of this victory there arose new possibilities of political freedom and economic concert. The war showed us the strength of great nations acting together for high purposes and the victory of arms foretells the en-

during conquests which can be made in peace when nations act justly and in furtherance of the common interests of men."

9. On November 5th, 1919, the President in his Thanksgiving proclamation, among other things, said:

"A year ago our people poured out their hearts in praise and thanksgiving that through Divine aid the right was victorious and peace had come to the nations which had so courageously struggled in defense of human liberty and justice. Now that the stern task is ended and the fruits of achievement are ours, we look forward with confidence to the dawn of an era where the sacrifices of the nations will find recompense in a world at peace."

10. On December 2nd, 1919 (Congressional Record of that date, page 29 et seq.), the President in his annual message to Congress, among other things, said:

(Page 30.) "The Congress might well consider whether the higher rates of income and profits taxes can in peace times be effectively productive of revenue and whether they may not on the contrary be destructive of business activity and productive of waste and inefficiency.

"There is a point to which in peace times high rates of income and profits taxes discourage energy, remove the incentive to new enterprise, encourage extravagance expenditures, and produce industrial stagnation, with consequent unemployment and other attendant evils * * *. Before the war America was heavily the debtor of the rest of the world * * *: the recent war has ended our isolation and thrown upon us a great duty and responsibility * * *. During the war the farmer performed a vital and willing service to the Nation. * * * He indispensably helped to win the war."

64

II.

ARMED FORCES OF THE UNITED STATES.

1. Following the signing of the armistice on November 11, 1918, the armed forces of the United States, which had been raised for the war emergency, were as rapidly as possible returned to this country and demobilized.

On October 22nd, 1919, said demobilization had progressed to such an extent that the President of the United States on October 27, 1919 (Congressional Record of that date, page 8063), in his message to Congress which accompanied the veto of the Volstead Act, said:

"It has to do with the enforcement of an act which was passed by reason of the emergencies of the war and whose objects have been satisfied in the demobilization of the Army and Navy."

2. L. E. Humphreys, if called and duly sworn as a witness for plaintiff herein, would testify as follows (and this stipulation is to have the same force and effect as if said witness had been so called and sworn and had so testified):

(a) Witness is and for some time has been telegraph editor of The Denver Times, a daily newspaper printed and published in the city of Denver, in the State of Colorado, and in that capacity he is required to and does keep in touch with events as reported in authentic news dispatches. The facts hereinafter set forth are based upon knowledge and information derived in this way.

65 (b) Prior to October 22, 1919, the armed forces of the United States which had been raised for the war emergency had been returned to this country and demobilized; the former members thereof returned to civil life; the Army and Navy of the United States reduced to a peace basis and all armed forces theretofore in foreign lands withdrawn therefrom except that there remained a small force in eastern Siberia and a relatively small force in the Coblenz area in Germany. The facts, in respect to said forces in Siberia and Germany, being set forth in the following paragraphs:

(c) As to the force in Siberia. In 1918 this country sent to eastern Siberia a relatively small force, which in September, 1918, reached its maximum strength of 255 officers and 7,267 men. During the summer of 1919 this force was being withdrawn and returned to the United States as rapidly as was practicable, and by October 22, 1919, a considerable portion thereof had been so withdrawn and returned. Prior to December 31, 1919, nearly all of said force had been so withdrawn and returned, and about March 1, 1920, the last of said force had been withdrawn and returned to the United States, and there has not since been, and is not now, any part of the Army of the United States in Siberia.

(d) As to the force in Germany. On October 22, 1919, there was and there has since remained in Germany a relatively small force at or near the bridgehead of Coblenz. Said force on said date and since has been and is in number approximately what it was on March 30, 1920, as hereinafter stated. The facts in respect

66 to said force in Germany are as set forth in a statement of The Honorable Julius Kahn, chairman of the committee of the House of Representatives on Military Affairs, to wit:

"At present our forces continue in the occupied areas, under the terms of the armistice of November 11, 1918, and the subsequent continuations thereof agreed to by ourselves, the Allied Powers, and the Teutons * * *. On March 30, 1920, the strength of our force in Germany was a total of 17,455. The English troops are at the bridgehead of Cologne and its vicinity; the American troops are at the bridgehead of Coblenz; the French troops are at the bridgehead of Mayence. Under the terms of the treaty, the Cologne bridgehead is to be evacuated in five years, if Germany keeps its agreement faithfully in the treaty; the Coblenz bridgehead is to be evacuated in ten years if the conditions of the treaty are faithfully performed by Germany; the Mayence bridgehead is to be evacuated in fifteen years if all the conditions and terms of the treaty are complied with by Germany."

3. Further as to said force in Germany, the President, on March 29, 1920 (Congressional Record, April 1, 1920, page 5496) in response to a request of the House of Representatives for information regarding the same, reported in part as follows:

"The American forces in Germany on March 26 were reported to comprise 726 officers and 16,756 enlisted men. These forces are stationed principally in the Coblenz area, the exact location of the units being set forth on the accompanying map. They are occupying that territory under the armistice agreement which with its annexes and conventions was transmitted by me to the Senate and published as Senate Document 147, Sixty-sixth Congress, first session. The paragraph specifically covering this occupation is Paragraph V of the clauses relating to the western front. * * * The Ameri-
67 can forces in Germany are at present operating under the terms of the original armistice and the subsequent conventions prolonging the armistice * * *. Upon the ratification of the treaty of peace by the Allied Powers, an inter-allied Rhineland High Commission was organized in the manner set forth in the message from the President of the United States to the Senate, containing the agreement between the allied and associated powers and Germany, with regard to the military occupation of the territories of the Rhine. This document is published as Senate Document 81, Sixty-sixth Congress, first session. This commission having been organized and having formulated ordinances for the zone of occupation, the question arose as to whether these ordinances should govern in the American sector and the representatives of the State Department and the commanding general of the American force in Germany, were instructed as follows: 'This Government can not admit jurisdiction of that commission over portion of Rhinish provinces occupied by the American force, etc.'"

4. Between the date of the armistice and March 22, 1920 (U. S. Bulletin of that date, page 275) approximately 2,500 officers have resigned from the Regular Army; their resignations have been accepted and they have gone into civilian life.

68

III.

OTHER WAR-TIME ACTIVITIES.

1. On December 2, 1918 (Official U. S. Bulletin of that date, page 6), the President in his address to Congress, among other things, said:

"While the war lasted we set up many agencies by which to direct the industries of the country in the services it was necessary for them to render * * * by which in short to put every material energy of the country in harness to draw the common load and make of us one team in the accomplishment of a great task. But the moment we knew the armistice to have been signed we took the harness off

* * *. It has not been possible to remove so readily or so quickly the control of foodstuffs and of shipping because the world has still to be fed from our granaries and the ships are still needed to send supplies to our men oversea and to bring the men back as fast as the disturbed conditions on the other side of the water permit; but even there restraints are being released as much as possible and more and more as the weeks go by * * *. It has been the policy of the Executive, therefore, since the armistice was assured (which is in effect a complete submission of the enemy) to put the knowledge of these bodies (certain governmental agencies) at the disposal of the business men of the country and to offer their intelligent mediation at every point and in every matter where it was desired. It is surprising how fast the process of return to a peace footing has moved in the three weeks since the fighting stopped. It promises to outrun any inquiry that may be instituted and any aid that may be offered. It will not be easy to direct it any better than it will direct itself. The American business man is of quick initiative."

2. By October 22, 1919, the process of return to a peace footing referred to by the President in that portion of his message quoted above had so far progressed that the situation was substantially as stated by the Supreme Court of the United States in Hamilton v. Kentucky Distilleries Company, 251 U. S., 146, at 159, and in the official documents and other publications referred to in the
69 footnotes at the bottom of said page. To this is to be added the facts then existing as specifically alleged in the complaint and expressly admitted in the answer herein and the further fact that on August 1, 1919, the telegraph and telephone lines of the country, which had theretofore been taken into the possession, operation, and control of the United States Government, had been surrendered to and thereafter did and still do remain in the possession, operation, and control of their owners.

3. The officers and representatives respectively of each of the plaintiffs herein would, if severally called and duly sworn as witnesses for the plaintiff in this cause, each testify in substance as follows (and this stipulation shall have the same force and effect as though such witnesses had been so called and sworn and had so testified): on October 22, 1919, except as to coal, sugar and its related products, and wheat and its products (the facts in respect to each of which are set forth in the following paragraphs), there existed no regulation of or attempt to regulate by the Federal Government or any of its agencies the price, production, or distribution in this country of any commodity except intoxicating liquor and except as Congress had in the exercise of its power over interstate commerce imposed or caused to be imposed certain regulations relative to articles moving therein. With the exceptions aforesaid the regulation which had theretofore, after the declaration of war with Germany, been put in effect had prior to said date been removed. On and after said October

70 22, 1919, except in the case of coal, sugar, and its related products and wheat and its products (the facts in respect to which are set forth in the following paragraphs) and intoxicating liquors (the facts in respect to which are matters of public record), there did not and there does not now exist any such war-time regulation or attempt to regulate except as the efforts of the Department of Justice to enforce section 4 of the original Lever Act as amended by section 2 of the act of October 22, 1919, might be designated as such regulation or attempt to regulate.

4. Coal. William H. Huff, if called and duly sworn as a witness for the plaintiff in this cause, would testify in substance as follows (and this stipulation shall have the same force and effect as though such witness had been so called and sworn and had so testified): He is and for some time has been president of the Victor-American Fuel Company, which owns and operates coal mines in the State of Colorado. In that capacity he has kept in close touch with the events relating to the coal-mining industry and the distribution and sale of coal, and the facts hereinafter stated are based upon knowledge thus derived. After the Armistice on November 11, 1918, the various orders which had theretofore been issued by the United States Fuel Administration were gradually modified or suspended. Finally, on January 31, 1919, all prices and regulations were suspended, with the following exceptions:

(a) A regulation relative to the making of contracts dated January 17, 1919, requiring that every contract should provide that the
71 prices named would be subject to revision, if prices were again fixed and that every contract should be subject to cancellation by the Fuel Administrator and subject to requisition, including under this term the right to divert.

(b) An order continuing the tide-water pool.

(c) Regulation reserving all powers of the fuel administrator.

(d) An order prohibiting the shipment of coal for reconsignment.

After issuing the order of January 31, 1919, Dr. Garfield, the fuel administrator, placed his resignation in the hands of the president, but it was not accepted. The Fuel Administration disintegrated, and on June 30, 1919, the appropriation for its expenses having lapsed the disintegration became complete. Prior to June 30th the Fuel Administration requested an allotment of funds by the President for the purpose of enabling the enforcement division to continue its work in the absence of congressional appropriation, but the President was advised that this was beyond his power, and the allotment was not made. On June 30, 1919, therefore, the Fuel Administration was completely disbanded, its funds exhausted, and there was no agency in existence to exercise its powers. This situation continued until October 30, 1919.

In October, 1919, a coal miners' strike was threatened by union miners which would affect a large number of the bituminous coal mines of this country. This strike was expected to commence Novem-

ber 1, 1919. On October 30, 1919, the President issued an Executive order, which revoked the suspension of January 31, 1919, to
72 the extent necessary to restore all bituminous coal prices and margins and giving the Fuel Administration power to restore any other regulations. Dr. Garfield, the fuel administrator, was recalled from Massachusetts and opened an office in his hotel rooms in Washington as fuel administrator. He had, however, no funds of any kind, no appropriation having been made for fuel administrator, and, with the exception of a few assistants, he relied upon the Railroad Administration to carry out his orders. Thereafter the fuel administrator issued certain other orders establishing temporary regulations relating to bituminous coal.

The Fuel Administrator continued in office until about December 13, 1919, when he resigned and no one has been appointed to take his place. When he left Washington his two assistants also left and the Fuel Administration again came to an end.

In a report dated February 23, 1920, to the President of the Senate the Director General of Railroads says that the executive order of October 30, 1919, mentioned above was issued "in anticipation of a strike of bituminous coal miners expected to commence November 1, 1919."

On December 19, 1919, the President appointed a commission to settle the then pending coal strike. On March 10, 1920, the commission, to which reference has been made, filed its report with the President.

On March 19, 1920, the President, by letter addressed to the operators and miners and made public by him, transmitted a printed
73 copy of the commission's report. The commission had no power to interfere with the selling price of coal nor did it undertake to do so or make any recommendations in connection therewith. But the President in the letter transmitting the report to the operators, employed, in part, the following language:

"I have carefully considered the question whether the war power of the Lever Act should be temporarily invoked by me despite the absence of any action of the commission so recommending to continue temporarily the control of prices and have concluded that it is not expedient for me to exercise any such price-fixing control so that on and after April 1, 1920, no Government maximum prices will be enforced. There is at present no provision of law for fixing new coal prices for peace time purposes and unless and until some grave emergency shall arise which in my judgment has a relation to the emergency purposes of the Lever Act I would not feel justified in fixing coal prices with reference to future conditions of production. * * * I am sure the public fully appreciates the desirability where practicable of leaving commercial transactions untrammeled, but at the same time I am satisfied the public will find ways to protect itself if such liberal policy shall appear to result in unreasonably high prices."

Since April 1, 1920, there has not existed nor does there now exist any Government regulation whatsoever relating to the price, production or distribution of coal.

5. Sugar and its related products. W. D. Lippitt, if called and duly sworn as a witness for the plaintiff in this cause, would testify in substance as follows (and this stipulation shall have the same force and effect as though said witness had been so called and sworn and had so testified):

He is and for some time has been vice president of the Great Western Sugar Company, which is and for several years has been engaged in the manufacture and production of beet sugar in Colorado and other western States and the sale of said product.

74 In that capacity he has kept in close touch with the progress of events relating to the sugar industry and the facts hereinafter stated are based upon knowledge thus derived.

On October 22nd, 1919, there existed no governmentally fixed price for sugar or its related products, nor any government regulation or attempt to regulate the price, production or distribution of sugar, except as the acts of the United States Sugar Equalization Board, hereinafter mentioned, affected the same. The regulations concerning price, production, and distribution of sugar and its related products which after the declaration of war with Germany had by agencies of the Federal Government been made, had prior to said October 22nd, 1919, with the exception mentioned, been withdrawn.

The United States Sugar Equalization Board Incorporated, was one of the agencies which had been employed by the President of the United States, pursuant to the Lever Act. On October 22nd, 1919, its activities were limited to purchasing and carrying sugar and its related products of the crops which preceded that coming into the market in the fall of 1919 and the winter of 1920. It wholly ceased to function on November 1st, 1919, and since said date has done nothing whatsoever. Although by an act of Congress approved December 31st, 1919, said United States Sugar Equalization Board was continued for the limited period and the express purpose therein mentioned, it has done nothing whatsoever thereunder and the provision of said act is that "It shall expire as to the domestic product June 30th, 1920." The purchases of sugar and its related products of the crops preceding that of the fall of 1919 and winter of 1920 (which were the only purchases made by it) were for the declared purpose of stabilizing the market in respect to sugar and its

75 related products of those particular crops.

Since October 22nd, 1919, there has not existed, nor does there now exist any government regulation whatsoever of the price, production, or distribution of sugar or its related products.

6. Wheat and its products. H. E. Johnson, if called and duly sworn as a witness for the plaintiffs in this cause, would testify in substance as follows (and this stipulation shall have the same force and effect as though said witness had been so called and sworn and had so testified):

He is and for some time has been vice president and general manager of The Colorado Milling and Elevator Company which is and for several years has been engaged in the purchase of wheat in Colorado and other western states, in milling the same and producing flour therefrom and in marketing said product. In that capacity he has kept in close touch with the progress of events relating to said industry and the facts hereinafter stated are based upon knowledge thus derived.

On October 22, 1919, there existed no governmentally fixed price for wheat or its products nor any government regulation or attempt to regulate the price, production of distribution of wheat except as the acts of the Food Administration Grain Corporation, hereinafter mentioned, affected the same. The regulations concerning price, production, and distribution of wheat and its products which after the declaration of war with Germany had by agencies of the Federal Government been made, had prior to said October 22nd, 1919, with the exception mentioned, been withdrawn.

The Food Administration Grain Corporation was one of the agencies which had been employed by the President of the United States
76 pursuant to the Lever Act. Acting under said Lever Act the President had made certain guaranties to producers of wheat of the crops of 1918 and 1919, by two proclamations dated, respectively, February 21, 1918, and September 2nd, 1918, issued pursuant to section 14 of said Lever Act. By act of Congress approved March 4th, 1919, entitled, "An act to enable the President to carry out the price guaranties made to producers of wheat of the crops of 1918 and 1919 and to protect the United States against undue enhancement of its liabilities thereunder," the President was specifically authorized to do certain things for the purposes mentioned in said title. To accomplish this the President made use of the agency of the Food Administration Grain Corporation, and on October 22, 1919, for some time prior thereto and at all times thereafter its activities were confined exclusively to dealing with wheat crops of 1918 and 1919 and the product thereof. To this end it fixed a minimum price, to wit, the price which the President had guaranteed to the farmers for wheat of said crops and required millers and other purchasers of wheat of said crops to pay therefor not less than said minimum price. These requirements were made effective by contracts between said Food Administration Grain Corporation and the purchasers and millers of wheat throughout the country.

These activities of the Food Administration Grain Corporation have been and are wholly under and pursuant to said act of March 4th, 1919, and have related and do relate solely to wheat of the crops of 1918 and 1919.

Except as aforesaid, there has not since October 22nd, 1919, existed, nor does there now exist, any Government regulation whatsoever of the price, production or distribution of wheat or its products.

77 7. Railroads: On December 2nd, 1918 (Official U. S. Bulletin of that date, p. 7) the President, in his address to Congress, among other things said:

"The question which causes me the greatest concern is the question of the policy to be adopted towards the railroads. I frankly turn to you for counsil upon it. I have no confident judgment of my own. * * * It was necessary that the administration of the railways should be taken over by the Government so long as the war lasted. * * * But all these necessities have now been served, and the question is what is best for the railroads and for the public in the future. * * * Let me say at once that I have no answer ready. The only thing that is perfectly clear to me is that it is not fair either to the public or to the owners of the railroads to leave the question unanswered, and that it will presently become my duty to relinquish control of the roads even before the expiration of the statutory period unless there should appear some clear prospect in the meantime of a legislative solution. Their release would at least produce one element of a solution, namely, certainty and a quick stimulation of private initiative. * * * I hope that the Congress will have a complete and impartial study of the whole problem instituted at once and prosecuted as rapidly as possible. I stand ready and anxious to release the roads from the present control, and I must do so at a very early date, for by waiting until the statutory limit of time is reached, I shall be merely prolonging the period of doubt and uncertainty which is hurtful to every interest concerned."

Prior to October 22nd, 1919, the President had by public announcement indicated that he would relinquish control of the railroads and return them to their owners on December 31st, 1919. However, as this date approached and it became evident that Congress would not by that time have completed the remedial legislation for the relief of the railroads under private control and operation, the President postponed the date and by proclamation issued December 24th, 1919 (Congressional Record, Feb. 28, 1920, p. 3914), did ordain and proclaim in part as follows:

"Whereas I now deem it needful and desirable that all railroads, systems of transportation, and property now under such Federal control be relinquished therefrom:

78 Now, therefore, under authority of section 14 of the Federal control act approved March 21, 1918, and of all other powers and provisions of law thereto me enabling, I, Woodrow Wilson, President of the United States, do hereby relinquish from Federal control, effective the 1st day of March, 1920, at 12.01 o'clock a. m., all railroads, systems of transportation, and property of whatever kind, taken or held under such Federal control and not heretofore relinquished, and restore the same to the possession and control of their respective owners."

Pursuant to said proclamation all of said railroads and systems of transportation were on the date and at the hour specified therein relinquished from Federal possession, control, and operation and

returned to their respective owners by whom they have since been and are now being possessed, controlled, and operated.

C. C. DORSEY,
G. C. BARTELS,
Solicitors for Plaintiffs.

HARRY B. TEBBOW,
United States District Attorney for the District of Colorado, Defendant pro se.

The above and foregoing agreed statement of facts constitutes all the evidence given, offered, or received in the hearing of said cause, and is approved and ordered filed as a part of the record thereof.
By the court this 10 day of May, 1920.

ROBT. E. LEWIS, *Judge.*

79 Second day, May term, Monday, May 10th, A. D. 1920.
Present: The Honorable Robert E. Lewis, district judge, and other officers as noted on the fourth day of May, A. D. 1920.

THE A. T. LEWIS & SON DRY GOODS COMPANY, The Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neusteter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company,
vs.
HARRY B. TEBBOW, AS UNITED STATES District Attorney for the District of Colorado.

7027. In Equity. Bill for injunction and for other relief.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

1. That the act of Congress approved August 10th, 1917, entitled: "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," as amended by the act of Congress approved October 22nd, 1919, and therein designated as "the food control and the District of Columbia rents act" as to the plaintiffs herein and each of them, is invalid because in conflict with the Constitution of the United States and the amendments thereto.

2. That the temporary injunction heretofore issued herein be and hereby is made permanent and that the defendant, his agents and representatives, and each of them, be and hereby are forever enjoined and prohibited from enforcing or attempting to enforce against the plaintiffs herein or either or any of them, said act of Congress of August 10th, 1917, as amended by said act of Congress of October 22nd, 1919, from prosecuting or attempting to prosecute or instituting or attempting to institute any prosecution against them, or either or them, under said act as amended, and from in any manner interfering with them, or either or them, or with the business of them, or either of them, or taking or attempting to take any steps whatsoever in respect to them, or either of them, or the business of them, or either of them, under or by virtue of any right or authority claimed to exist by reason of said act as amended, or any part thereof.

THE A. T. LEWIS AND SON DRY GOODS COMPANY, et al, *vs.* HARRY B. TEDROW, AS UNITED STATES District Attorney for the District of Colorado.	7027. In equity. Bill for injunction and for other relief.

81 This cause comes on now to be heard, the defendant appearing in his own proper person. And thereupon the defendant prays an appeal to the Supreme Court of the United States which is allowed to him.

82 [Filed May 10, 1920. Charles W. Bishop, clerk.]

In the District Court of the United States for the District of Colorado.

No. ——.

THE A. T. LEWIS & SON DRY GOODS COMPANY, THE Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neusteter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company, plaintiffs, *vs.* HARRY B. TEDROW, AS UNITED STATES DISTRICT Attorney for the District of Colorado, defendant.	Assignment of errors.

And now on this 10th day of May, A. D. 1920, came the defendant in his own proper person, and says that the decree entered in the

above cause on the 10th day of May, 1920, is erroneous and unjust to defendant.

First. Because the court erred in finding and decreeing that the act of Congress approved August 10, 1917, as amended by
83 the act of Congress of October 22, 1919, is invalid because in conflict with the Constitution of the United States and amendments thereto.

Second. Because the court erred in its final decree by making permanent the temporary injunction heretofore issued in this cause, in forever enjoining and prohibiting defendant, his agents and representatives, from enforcing or attempting to enforce said act of Congress of August 10, 1917, as amended by said act of Congress of October 22, 1919, and from prosecuting or attempting to prosecute plaintiffs thereunder and from in any manner interfering with plaintiffs or taking steps against them under said act and its amendment.

Third. Because the court erred in controlling or attempting to control, by said decree, the proceedings of the grand jury in its investigations of violations of said act of Congress and its amendment.

Wherefore the defendant prays that the said decree be reversed and the district court directed to dismiss the bill.

HARRY B. TEDROW,
As United States District Attorney
for the District of Colorado. Pro se.

84 7027

[Filed May 10, 1920. Charles W. Bishop, clerk.]

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

The United States of America to The A. T. Lewis and Son Dry Goods Company, The Denver Dry Goods Company, The Daniels and Fisher Stores Company, The Hedgcock and Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neustetter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, The Golden Eagle Dry Goods Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, District of Columbia, thirty days from and after the day this citation bears date, pursuant to an appeal called by the District Court of the United States for the District of Colorado, sitting at Denver, wherein Harry B. Tedrow, as United States district attorney for the District of Colorado, is appellant and you are appellees to show cause, if any there be, why the decree rendered against the said appellant as in

said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the honorable Robert E. Lewis, judge of the District Court of the United States for the District of Colorado, at Denver, in said district, this tenth day of May, A. D. 1920.

ROBERT E. LEWIS,
District Judge.

HARRY B. TEDROW.

84½ STATE OF COLORADO,
City & County of Denver, ss:

Acknowledgment of service of the within citation on behalf of the plaintiffs herein, and each of them, is hereby made, at Denver, Colorado, this 10th day of May, 1920.

CLAYTON C. DORSEY,
Solicitor for plaintiffs.

85 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the District Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to eighty-three (83), both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings and of all thereof, heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein The A. T. Lewis & Son Dry Goods Company, The Denver Dry Goods Company, The Daniels & Fisher Stores Company, The Hedgcock & Jones Specialty Store Company, The Powers-Behen Clothing Company, The Fontius Shoe Company, The Broadhurst-Young Shoe Company, The Neusteter Suit Company, The Cottrell Clothing Company, The Joslin Dry Goods Company, The Gano-Downs Clothing Company, The May Department Stores Company, and The Golden Eagle Dry Goods Company were plaintiffs, and Harry B. Tedrow, as United States district attorney for the District of Colorado, was defendant, as fully and completely as the same still remain on file and of record in my office at Denver.

In testimony to the above I do hereunto sign my name and affix the seal of said court at the city and county of Denver, in said district, this fifteenth day of May, A. D. 1920.

[SEAL.] CHARLES W. BISHOP,
Clerk.

(Indorsement on cover:) File No. 27,707. Colorado, D. C. U. S. Term No. 952. Harry B. Tedrow, as United States district attorney for the District of Colorado, appellant, vs. The A. T. Lewis & Son Dry Goods Company, The Denver Dry Goods Company et al. Filed May 21st, 1920. File No. 27,707.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1920

50 5
250
250 5
15
50
125
25 0
37.50